

## GENERAL RELEASE AND INDEMNITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that Carolyn Hodges ("Releasor") hereby releases the City of Winston-Salem, and all past and present officers, elected or appointed officials, agents, and employees of the City of Winston-Salem (hereafter jointly and separately referred to as "the Released Parties"), this 2nd day of AUGUST, 2017, as is more particularly described herein.

In consideration of the compromise of disputed claims and the payment of \$250,000.00 on behalf of the Released Parties, (to be disbursed as described below), the Releasor does hereby voluntarily and knowingly execute this General Release and Indemnity Agreement with the express intention of effecting the extinguishment of all obligations herein designated.

1. The Releasor, does hereby for herself, her heirs and assigns, and personal representatives hereby RELEASE, ACQUIT AND FOREVER DISCHARGE THE RELEASED PARTIES and their predecessors, successors, heirs and assigns, officers, elected or appointed officials, agents, servants, employees, directors, and their attorneys from any and all claims, actions or causes of action, demands, damages (both actual and punitive), costs, back pay, front pay, judgments, expenses, liabilities, attorneys' fees and legal costs, injunctive or declaratory relief, whether known or unknown, whether in law or in equity, claims for negligence, for any alleged constitutional violations, claims under 42 U.S.C. § 1983, claims to recover damages for personal injuries, medical expenses, lost wages, pain and suffering, mental or emotional distress, or loss of earning capacity and from whatsoever cause arising or from whatsoever act or omission arising, which they now have, or might otherwise have, against the Released Parties, including, without limitation, claims to recover damages for federal statutory violations, federal constitutional violations, North Carolina statutory violations, and North Carolina state law tort claims, including but not limited to claims for negligence, personal injuries, medical expenses, loss of consortium, lost wages, loss of earning capacity, and emotional distress, from whatsoever cause arising or from whatsoever act or omission arising, which may now exist, or might otherwise have existed, against the Released Parties arising from the circumstances surrounding Releasor's injury/injuries on November 2, 2013 and/or claims which were raised or could have been raised in the complaint and/or amended complaint filed in Carolyn Hodges v. City of Winston-Salem, 16 CVS 1921, filed in Forsyth County Superior Court, and/or arising from any conduct (whether intentional or otherwise), action, inaction, omission, or negligence on the part of any of the Released Parties, their officers, employees, agents, representatives, predecessors, successors, heirs and assigns, agents, servants, directors, and attorneys of and from any and all claims, occurring before the signing of this General Release and Indemnity Agreement relating to the incident of November 2, 2013 referenced above, to the end that all claims or matters that are, or might be, in controversy between Releasor and the Released Parties are forever put at rest, it being Releasor's clear intention to forever discharge and release any and all claims against those persons and entities herein released for all consequences resulting or potentially to result from the aforementioned events.

2. IT IS FURTHER AGREED AND UNDERSTOOD by the Releasor that within ten (10) days after the execution of this General Release and Indemnity Agreement, Releasor

shall dismiss with prejudice any outstanding lawsuits she has pending against any of the Released Parties, including the following lawsuit: Carolyn Hodges v. City of Winston-Salem, 16 CVS 1921, filed in Forsyth County Superior Court.

3. IT IS FURTHER AGREED AND UNDERSTOOD that the payment of the above-stated consideration is not to be construed as an admission of liability on the part of the Released Parties, but that the payment of such consideration is made only in settlement of doubtful claims, liability on the part of the Released Parties being expressly denied.

4. IT IS FURTHER UNDERSTOOD that each party hereto shall have the burden and responsibility of paying for and satisfying any claims for attorneys' fees, disbursements, costs, and other expenses incurred by each party with respect to their legal representation in this controversy. No party will seek an award of attorneys' fees from the court. It is further understood that no party shall be considered to have been the "prevailing" or "successful" party in the lawsuit within the meaning of any statute, rule, or other law for any purpose, including the award of attorneys' fees and costs.

5. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT. The Releasor represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this General Release and Indemnity Agreement, except as otherwise set forth herein; that the Releasor has the sole right and exclusive authority to execute this General Release and Indemnity Agreement and receive the sums specified in it; and that the Releasor has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this General Release and Indemnity Agreement.

6. IT IS UNDERSTOOD AND AGREED that no withholding of income taxes has been made. The Releasor understands and agrees that to the extent any tax liability may now or hereafter become due in addition to this withholding because of the payment of any sums pursuant to this agreement, such liability shall be her sole responsibility and she shall pay any taxes, penalty or interest which may be determined to be due and payable. Moreover, the Releasor agrees to save and hold harmless the Released Parties in connection with any and all taxes, penalties, interest, or other costs that may be or become due as a result of this agreement.

7. CONFIDENTIALITY AND NON-DISPARAGEMENT AGREEMENT. The Releasor hereby agrees that she will not disparage or make negative statements about the Released Parties or any of them, or about their officers, deputies, directors, agents, representatives, or employees. The Releasor further agrees that neither she nor her attorneys, agents or representatives shall reveal to anyone, other than as may be mutually agreed to in writing, any of the terms of this General Release and Indemnity Agreement or any of the amounts, numbers or terms and conditions of any sums payable to the Releasor hereunder. The only exceptions to this confidentiality agreement are as follows:

1. The attorneys for the Releasor and the Releasor are authorized to discuss the civil action or its history and to say that they have resolved the civil action without disclosing the monetary settlement amount.
2. Disclosure may be made to firm members of the law firms representing the Releasor named herein as may be necessary to carry on the practical operation of the business of the party's attorneys. Before any such disclosure is made under this provision, the firm member or employee to whom the disclosure will be made shall be advised of the confidentiality provision in this agreement; and
3. Disclosure may be made pursuant to a court order or as otherwise required by law.

8. MEDICARE ACKNOWLEDGMENT. The Releasor acknowledges that Releasor is currently a Medicare beneficiary and that the Centers for Medicare & Medicaid Services (CMS), the entity that manages the Medicare program, may have a claim for medical services paid on behalf of Releasor related to this claim pursuant to the Medicare Secondary Payer Act (42 U.S.C. § 1395y (b)) as amended. These medical services or payments made under the Medicare program are called "conditional payments". CMS has hired a subcontractor, the MSPRC, to manage the conditional payments on its behalf. It is through the MSPRC that conditional payment information can be obtained.

9. DISBURSEMENT. The parties have determined through information provided by the Releasor, the Releasor's representative, a review of Releasor's medical bills, or, through the MSPRC's interim conditional payment statement, that the conditional payments have been made on behalf of Releasor related to this claim. The parties further acknowledge that the MSPRC has not yet calculated a "final lien demand," and will probably not calculate a "final lien demand" until after it receives the final settlement documents regarding this claim.

Therefore, in settlement of this claim, the parties hereby agree that:

1. The City shall issue a settlement check for \$250,000.00 to "Raymond Marshall Trust Account"; and
2. Releasor and her attorneys will hold \$83,333.33 in trust for the purposes of satisfying any Medicare liens and/or above-referenced liens. Releasor and her attorney agree that any and all liens, including Medicare liens, will be paid using the proceeds of the settlement check.

The parties further agree that the Releasor will be responsible for resolving the

conditional payment lien with the MSPRC and that the Released Parties have no further obligation, payment or otherwise, to the Releasor, CMS or the MSPRC.

Any amount owed to the MSPRC in excess of the estimated lien amount will be the sole responsibility of the Releasor, and the Releasor shall be responsible to CMS for any claim, right, lien, or cause of action that Medicare may assert pursuant to the Medicare Secondary Payer Act (42 U.S.C. § 1395y (b)).

The Releasor further agrees to hold the Released Parties harmless and indemnify the Released Parties from any claim, lien, or cause of action brought by any entity pursuant to Medicare Secondary Payer Act (42 U.S.C. § 1395y (b)) related to this claim that exceeds the estimated lien amount.

**10. FUTURE MEDICAL EXPENSES.** It is not the intention of any party to this Agreement to shift responsibility of future medical benefits to the Federal Government. It is the parties intention to comply with the Medicare Secondary Payer Act (42 U.S.C. § 1395y (b)) as amended and the relevant regulations contained in 42 C.F.R. §411.

After considering the parties' obligations according to the aforementioned statute and regulations, the parties agree that there is no risk of shifting future medical expenses to the Medicare program after the settlement of this claim because the Releasor hereby acknowledges that no further medical treatment is needed, warranted or required with regard to any alleged injuries sustained or arising out of this accident, occurrence or claim.

Taking into account the various factors of this claim including the Releasor's alleged injuries, claimed economic losses, and claimed pain and suffering, no portion of this settlement is allocated for future medical expenses and is therefore not a settlement contemplated by the Medicare Secondary Payer Act.

The parties in good faith do not believe that Medicare may incur any expense in the future related in any way to the claims asserted in this matter or subject to this Agreement, and any expense that Medicare may incur in this matter is too remote to calculate or reasonably foresee at the time of settlement. Notwithstanding this fact, and notwithstanding that Releasor represents that she has no intention of pursuing any medical care in the future for any injuries sustained in the accident for which Medicare may become responsible, she reserves the right to submit an inquiry to CMS seeking information about Medicare's position on whether Medicare believes any set aside arrangement should be established in connection with the settlement.

In addition, any future medical treatment relating to body parts allegedly injured, sustained or arising out of this accident, occurrence or claim, or expenses incurred by the Releasor for like or similar injuries, are the sole responsibility of the Releasor.

**11. WAIVER AND HOLD HARMLESS.** The Releasor expressly releases and further waives her right to any claim or cause of action against the Released Parties for any claim she may currently have or that arises in the future pursuant the Medicare Secondary Payer Act -

Private Cause of Action as codified in 42 U.S.C § 1395y(b)(3)(A) related to the claims and events addressed in this Agreement and subject to the Release set forth above. The Releasor further agrees to hold the Released Parties harmless and indemnify the Released Parties from any claim, lien, or cause of action brought by any entity pursuant to Medicare Secondary Payer Act (42 U.S.C. § 1395y (b)) related to this claim.

12. COOPERATION CLAUSE. Should the Centers for Medicare & Medicaid Services (or any of its affiliates or subcontractors) submit or make any claim, allegation, investigation, or otherwise inquire about any Medicare-related expenses alleged by CMS to be associated with this claim at any time in the future, the Releasor expressly agrees to cooperate with the Released Parties or any of their agents, subsidiaries, or designees in responding to or addressing the claims raised by CMS. This includes, but is not limited to, providing the Released Parties with a consent form so it can transmit and receive data to and from CMS (including medical information), providing the Released Parties with details about any alleged expenses CMS claims is related to this claim, and any other information that is reasonably necessary to allow the Released Parties to properly address any claim by CMS.

13. LIENS, CLAIMS OF LIENS & SUBROGATION. The Releasor hereby warrants and represents to the Released Parties that there are no medical or hospital bills, liens or expenses for which the Released Parties or their insurers and/or sureties may be held liable under Section 2651 through 2653 of Title 42, and Section 1074(b), 1076(a)(b) and 1095 of title 10, U.S. Code, Medicare, Medicaid, Champus, Champva, TriCare, or any other law or statute of any state or the United States of America or any agency or authority thereof. The Releasor further warrants and represents to the Released Parties that there are no assignments, liens or claims of any other type whatsoever against the proceeds of this settlement, including but not limited to, claims of chiropractic, medical, or hospital providers, funeral homes or mortuaries, government agencies, employers, or insurance companies, for payment or reimbursement for payment, of chiropractic, medical, or hospital services furnished to the Releasor, by reason of or arising out of the injury/injuries on November 2, 2013 and/or claims which were raised or could have been raised in the complaint and/or amended complaint filed in Carolyn Hodges v. City of Winston-Salem, 16 CVS 1921, filed in Forsyth County Superior Court. In the event the Released Parties, or any of them, or their insurers and/or sureties are required to pay any such expenses to any person, firm, corporation, authority, governmental agency or other entity on account of any hospital or medical treatment, or other services rendered to the Releasor, the undersigned Releasor will hold harmless, defend and indemnify the Released Parties and their insurers and/or sureties for all such claims.

The Releasor understands and agrees that she shall be solely responsible for paying all physician, hospital, and medical bills and expenses and any and all other bills arising out of or incurred as a result of the injuries and losses suffered as a result of said incident and for satisfying any and all claims, liens, debts, obligations or demands, including reimbursement and satisfaction of subrogation rights, if any, of any and all persons, firms, individuals, corporations or entities who made or are obligated to make any payments of any kind or nature to or on her behalf as a result of the injuries and losses suffered as a result of said incident, as well as liens from Medicaid or Medicare.

14. IT IS UNDERSTOOD AND AGREED that the Releasor has consulted with independent legal counsel regarding this settlement and is not relying on any representation of any other party, or their counsel, regarding the legal effect or consequence of the execution and performance of this General Release and Indemnity Agreement. The Releasor hereby warrants that no representations about the nature or the extent of any claims, demands, damages or rights that she has or may have, against those persons or entities released herein have been made to them or to anyone acting on her behalf to induce her to execute this Release, and she relies on no such representations; that she has fully read and understood this Release before signing her name, and that she acts voluntarily.

15. IT IS UNDERSTOOD AND AGREED that this General Release and Indemnity Agreement shall be interpreted using North Carolina law. The General Release and Indemnity Agreement shall not be construed against any party more strongly than it is construed against any other party.

16. IT IS UNDERSTOOD AND AGREED that if after the date hereof, any provision of this General Release and Indemnity Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this General Release and Indemnity Agreement, such provisions shall be fully severable. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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I HAVE READ THE FOREGOING GENERAL RELEASE AND INDEMNITY AGREEMENT, FULLY UNDERSTAND IT AND, AFTER CONSULTING WITH LEGAL COUNSEL, HAVE VOLUNTARILY EXECUTED IT ON THE DAY OR DATES WRITTEN BELOW, SIGNIFYING MY ASSENT TO, AND WILLINGNESS TO BE BOUND BY, ITS TERMS.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 22<sup>nd</sup> day of August, 2017.

**CAUTION -- READ BEFORE SIGNING**

Carolyn Hodges  
Carolyn Hodges

Sworn to and subscribed before me, this the  
22 day of August, 2017.

Mary G. Smith  
Notary Public  
My Commission Expires: 9/15/2019

